

REMARKS

This Amendment is submitted in response to the Office Action dated October 19, 2005. The Patent Office rejected Claims 1, 2, 4-8, 10, 16, 17 and 20 under 35 U.S.C. §102(b) as being anticipated by *Saylor* (U.S. Patent No. 5,308,670). Further, the Patent Office rejected Claim 3 under 35 U.S.C. §103(a) as being unpatentable over *Saylor* in view of *Gimbal* (U.S. Patent No. 6,081,927). Still further, the Patent Office rejected Claims 9, 18 and 19 under 35 U.S.C. §103(a) as being unpatentable over *Saylor* in view of *Davis* (U.S. Des. 161,572).

Attorney Brian Anscomb and Examiner Eugene Lhymn at the Patent Office held a telephonic interview on August 10, 2006 to discuss proposed Claims 1-20 in view of the references cited in the Office Action. During that telephonic interview, Examiner Lhymn provided suggestions for amending the proposed claims to overcome the rejections by the Patent Office and place the claims of the application in allowable form. In accordance with the suggestions made by Examiner Lhymn during the telephonic interview, Applicant amended Claims 1, 9, 10, 16 and 18-20. Applicant asserts that Claims 1-20 overcome the rejections made by the Patent Office and place the application in condition for allowance. Notice to that effect is requested.

With respect to the rejection of Claims 1, 2, 4-8, 10, 16, 17 and 20 under 35 U.S.C. §102(b) as being anticipated by *Saylor*, Applicant submits that the amendment to Claims 1 and 16 overcomes

the rejection under 35 U.S.C. §102(b) and places the application in condition for allowance. Notice to that effect is requested.

In Office Action, the Patent Office alleges:

With respect to claim 1, Saylor discloses the following:

a first stopper defined by peripheral walls between a first and second end, as shown in Figs. 1 & 2 below;

a base having a planar surface defined between a first and second end wherein the planar surface of the base is adjacent to the surface and the first stopper is connected to the base (Figs. 1 & 2 below);

the base having a perimeter defining an exterior wherein the perimeter is defined between a first end, a second end, a first edge and a second edge, the width of the base being continuously uniform between the first and second edges as shown below in Fig. 2; and

a support element adjacent the surface wherein the second end of the base is associated with the support element and the base extends between the first stopper and support element (Figs. 1 & 2 below).

Independent Claim 1, as amended, requires that the width of the base is continuous and uniform between the first edge of the base and the second edge of the base from the first end of the base to the second end of the base. Further, Claim 1 requires that the base is only connected to the first stopper at the first end of the base and the support element at the second end of the base. Still further, Claim 1 requires that the axis is planar from the first edge to the second edge. Moreover, Claim 1 requires that the axis has a thickness which is defined between the top side and the bottom side of the base wherein the thickness is uniform from the first edge of the base to the second edge of the base.

Independent Claim 16, as amended, requires that the stopper is the only stopper connected to the arm. Moreover, Claim 16 requires the arm having the cross-section which has a thickness which is continuous and uniform across the width of the arm from the first exterior edge of the arm to the second exterior edge of the arm.

Saylor merely discloses a vinyl pad with raised sides. The pad is placed beneath a vehicle in a garage to collect leaking oil, salt, mud or the like. The outer edge of the pad is folded over to create a pocket. A piece of rubber hose the length of the pocket is inserted into the pocket to raise all four sides of the pad. A basin is created in the pad to contain elements falling onto the pad.

Nowhere does Saylor disclose that the width of the base is continuous and uniform between the first edge of the base and the second edge of the base from the first end of the base to the second end of the base as required by Claim 1. Further, nowhere does Saylor disclose that the base is only connected to the first stopper at the first end of the base and the support element at the second end of the base as required by Claim 1. Still further, nowhere does Saylor disclose that the axis is planar from the first edge to the second edge as required by Claim 1. Moreover, nowhere does Saylor disclose that the axis has a thickness which is uniform from the first edge of the base to the second edge of the base as required by Claim 1.

Nowhere does Saylor disclose that the stopper is the only stopper connected to the arm as required by Claim 16. Nowhere does Saylor disclose the cross-section which has a thickness which is continuous and uniform across the width of the arm from the first exterior edge of the arm to the second exterior edge of the arm as required by Claim 16.

Saylor merely discloses a pad with a width which has raised sides to contain elements falling into the pad. Further, Saylor discloses that the corners of the pad are trimmed at a 45 degree angle, 2. Still further, Saylor discloses a piece of reinforced rubber hose 7, the length of the pocket 5, is inserted into the open end 8, thus raising the sides of the pad. Therefore, nowhere does Saylor disclose the novel structural element of the present invention as defined by amended Claims 1 and 16.

Under 35 U.S.C. §102, anticipation requires that a single reference disclose each and every element of Applicant's claimed invention. *Akzo N.V. v. U.S. International Trade Commission*, 808 F.2d 1471, 1479, 1 USPQ 2d. 1241, 1245 (Fed. Cir. 1986). Moreover, anticipation is not shown even if the differences between the claims and the references are "insubstantial" and one skilled in the art could supply the missing elements. *Structure Rubber Products Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 USPQ 1264, 1270 (Fed. Cir. 1984).

In view of the foregoing, since Saylor fails to disclose the novel structural elements of amended independent Claims 1 and 16,

the rejection of Claims 1, 2, 4-8, 10, 16, 17 and 20 under 35 U.S.C. §102(b) has been overcome and should be withdrawn. Notice to that effect is requested.

With respect to the rejection of Claim 3 under 35 U.S.C. §103(a) as being unpatentable over *Saylor* in view of *Gimbel*, Applicant submits that the amendment to Claim 1 overcomes the rejection under 35 U.S.C. §103(a) and places the application in condition for allowance. Notice to that effect is requested.

In the Office Action, the Patent Office alleges:

*Saylor* discloses the claimed invention except for stitching connecting the first end of the base to the first stopper. However, *Gimbel* teaches that ultrasonically sealing, or welding, is an equivalent fastening means to stitching (col. 4, lines 25-33). Stitching provides an alternative fastening means.

Claim 3 requires stitching connecting the first end of the base to the first stopper. Neither *Saylor* nor *Gimbel*, taken singly or in combination, teaches or suggests stitching connecting the first end of the base to the first stopper as required by Claim 3. The Patent Office admits that *Saylor* fails to teach or to suggest stitching connecting the first end of the base to the first stopper. *Gimbel* merely teaches stitching layers of a glove. Therefore, the rejection of Claim 3 under 35 U.S.C. §103(a) is improper and should be withdrawn. Notice to that effect is requested.

With respect to the rejection of Claims 9, 18 and 19 under 35 U.S.C. §103(a) as being unpatentable over *Saylor* in view of

*Davis*, Applicant submits that the amendment to independent Claims 1 and 16 overcome the rejection under 35 U.S.C. §103(a) and places the application in condition for allowance. Notice to that effect is requested.

In the Office Action, the Patent Office alleges:

With respect to claims 9 and 18, *Saylor* discloses the claimed invention except for a scale being attached to the planar surface of the base. However, *Davis* teaches a mat having a scale attached to its planar surface. Having a scale as such provides a measurement means.

With respect to claim 19, the scale taught by *Davis* is also inherently indicia associated with the arm, or base.

Claim 9 requires a scale displayed on the top side of the base wherein the scale is related to the plurality of containers. Neither *Saylor* nor *Davis*, taken singly or in combination, teaches or suggests a scale attached to the base wherein the scale is related to the plurality of containers as required by Claim 9. The Patent Office admits that *Saylor* fails to teach or to suggest a scale attached to the base as required by Claim 9. *Davis* merely teaches a paper place mat which is shown in reduced scale. Accordingly, the rejection of Claim 9 under 35 U.S.C. §103(a) is improper and should be withdrawn. Notice to that effect is requested.

Claim 18 requires a scale associated with the length of the arm wherein the scale is related to the plurality of containers. Neither *Saylor* nor *Davis*, taken singly or in combination, teaches or suggests a scale associated with the length of the arm wherein

the scale is related to the plurality of containers as required by Claim 18. The Patent Office admits that *Saylor* fails to teach or to suggest a scale associated with the length of the arm as required by Claim 18. Davis merely teaches a paper place mat which is shown in reduced scale. Accordingly, the rejection of Claim 18 under 35 U.S.C. §103(a) is improper and should be withdrawn. Notice to that effect is requested.

Claim 19 depends from independent Claim 16. Davis fails to teach or to suggest the elements of the present invention which are not taught by *Saylor*, as required by amended independent Claim 16. Accordingly, the rejections of Claims 18 and 19 under 35 U.S.C. §103(a) has been overcome and should be withdrawn. Notice to that effect is requested.

Moreover, a person of ordinary skill in the art would never have been motivated to combine *Saylor* with *Gimbel* or *Davis* in the manner suggested by the Patent Office in formulating the rejection under 35 U.S.C. §103(a). More specifically, Applicant submits that the Patent Office is merely "piece-mealing" references together, providing various teachings and positively defined limitations of Applicant's container holder and system for supporting containers to deprecate the claimed invention. Of course, hindsight reconstruction of Applicant's invention is impermissible. Accordingly, Applicant respectfully submits that independent Claims 1 and 16 distinctly define the present invention from *Saylor*, *Gimbel* and *Davis*.



It is submitted that the question under §103 is whether the totality of the art would collectively suggest the claimed invention to one of ordinary skill in this art. In re Simon, 461 F.2d 1387, 174 USPQ 114 (CCPA 1972).

That elements, even distinguishing elements, are disclosed in the art is alone insufficient. It is common to find elements somewhere in the art. Moreover, most if not all elements perform their ordained and expected functions. The test is whether the invention as a whole, in light of all of the teachings of the references in their entireties, would have been obvious to one of ordinary skill in the art at the time the invention was made. Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983).

It is insufficient that the art disclosed components of Applicant's invention, either separately or used in other combinations. A teaching, suggestion, or incentive must exist to make the combination made by Applicant. Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1988).

With the analysis of the deficiencies of *Saylor*, *Gimbel* and *Davis* in mind, as enumerated above, no reason or suggestion in the evidence of record exists why one of ordinary skill in the art would have been led to modify *Saylor* with *Gimbel* or *Davis* to produce the claimed invention. Therefore, *prima facie* obviousness has not been established by the Patent Office as



required under 35 U.S.C. §103. Accordingly, the rejections of Claims 3, 9, 18 and 19 have been overcome. Notice to that effect is requested.

In view of the foregoing remarks and amendments, Applicant respectfully submits that all of the claims in the application are in allowable form and that the application is now in condition for allowance. Further, Applicant submits that neither further search nor consideration would be necessitated by entry of this Amendment; therefore, entry of this Amendment is proper and should be effected.

If any outstanding issues remain, Applicant urges the Patent Office to telephone Applicant's attorney so that the same may be resolved and the application expedited to issue. Applicant requests the Patent Office to indicate all claims as allowable and to pass the application to issue.

Respectfully (submitted)

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**CERTIFICATE OF TRANSMISSION**

I hereby certify that this **Amendment After Final and Transmittal Letter** are being transmitted via telefax (571)273-8300 on August 15, 2006



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